

GIBSON, DUNN & CRUTCHER LLP

Lee Crain (*pro hac vice*)
lcrain@gibsondunn.com
200 Park Avenue, 47th Floor
New York, New York 10166
Tel.: 212-351-4000
Fax: 212-351-4035

GIBSON, DUNN & CRUTCHER LLP

Rachel S. Brass (SBN 219301)
rbrass@gibsondunn.com
Neema Jalali (SBN 245424)
njalali@gibsondunn.com
Stephen Henrick (SBN 310539)
shenrick@gibsondunn.com
555 Mission Street, Suite 3000
San Francisco, California 94105-0921
Tel.: 415-393-8200
Fax: 415-393-8306

Attorneys for Plaintiff Michael Cavness

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

MICHAEL CAVNESS,

Plaintiff,

vs.

ROSS MIRKARIMI, ET AL.,

Defendants.

Case No. 3:14-CV-3403 EDL

**DECLARATION OF STEPHEN HENRICK IN
SUPPORT OF PLAINTIFF'S OPPOSITION TO
DEFENDANTS' MOTION FOR SUMMARY
JUDGMENT**

Hearing :

Date: November 27, 2018
Time: 9:00 a.m.
Location: Courtroom E, 15th Floor
Judge: Hon. Elizabeth D. Laporte

Trial Date: March 11, 2019

1 I, Stephen Henrick, declare as follows:

2 I am an attorney at law admitted to practice before all of the courts of the States of New York
3 and California as well as the United States District Court for the Northern District of California. I am
4 an associate at the law firm of Gibson, Dunn & Crutcher LLP, and I represent Plaintiff Michael
5 Cavness in the above-captioned action. I submit this declaration in support of Plaintiff's Opposition
6 to Defendants' Motion for Summary Judgment. I have personal knowledge of matters set forth
7 herein, except where stated otherwise, and if called to testify, I could and would competently testify
8 thereto.

9 1. Attached hereto as **Exhibit 1** is a true and correct copy of excerpts of the deposition
10 transcript of Michael Cavness, dated April 23, 2015, reported by Rebecca K. Dowell, CSR, RPR,
11 CSR No. 8043.

12 2. Attached hereto as **Exhibit 2** is a true and correct copy of excerpts of the deposition
13 transcript of Michael Cavness, dated August 22, 2018, reported by Esther Swensen-Chapa, CSR No.
14 7481.

15 3. Attached hereto as **Exhibit 3** is a true and correct copy of a San Francisco County Jail
16 Facility Prisoner Grievance Form, dated December 3, 2011, and identified as Exhibit 11 to the
17 deposition of Michael Cavness dated April 23, 2015.

18 4. Attached hereto as **Exhibit 4** is a true and correct copy of a San Francisco County Jail
19 Facility Prisoner Grievance Form, dated November 20, 2011, and identified as Exhibit 12 to the
20 deposition of Michael Cavness dated April 23, 2015.

21 5. Attached hereto as **Exhibit 5** is a true and correct copy of two documents (a San
22 Francisco County Jail Facility Prisoner Grievance Form, dated October 26, 2011 and a San Francisco
23 Sheriff's Department Prisoner Action Request dated January 15, 2012), both of which were merged
24 and collectively identified as Exhibit 13 to the deposition of Michael Cavness dated April 23, 2015.

25 6. Attached hereto as **Exhibit 6** is a true and correct copy of excerpts of the deposition
26 transcript of Raymond Saunders, dated January 22, 2018, reported by Melissa Hammerness, CSR No.
27 4739.

1 7. Attached hereto as **Exhibit 7** is a true and correct copy of excerpts of the deposition
2 transcript of Frank Winch, dated November 14, 2017, reported by Carla Soares, CSR No. 5908.

3 8. Attached hereto as **Exhibit 8** is a true and correct copy of excerpts of the deposition
4 transcript of Frank Winch, dated August 15, 2018, reported by Mona M. Russo, CRR, RDR, CSR
5 No. 8771.

6 9. Attached hereto as **Exhibit 9** is a true and correct copy of Plaintiff's Responses and
7 Objections to Defendant Lieutenant Frank Winch's First Request for Admissions, dated December 1,
8 2017.

9 10. Attached hereto as **Exhibit 10** is a true and correct copy of a Housing Observation
10 Sheet, dated October 14, 2011, bearing Bates Number CCSF_CAVNESS 000222, and identified as
11 Exhibit 28 to the deposition of Frank Winch dated November 14, 2017.

12 11. Attached hereto as **Exhibit 11** is a true and correct copy of excerpts of the deposition
13 transcript of Fitzgerald Fields, dated November 15, 2017, reported by Carla Soares, CSR No. 5908.

14 12. Attached hereto as **Exhibit 12** is a true and correct copy of photographs of the inside
15 of County Jail 4, bearing Bates Numbers CCSF_CAVNESS 000225 through CCSF_CAVNESS
16 000262 and identified as Exhibit 32 to the deposition of Fitzgerald Fields dated November 15, 2017.

17 13. Attached hereto as **Exhibit 13** is a true and correct copy of excerpts of the deposition
18 transcript of Austin Morris, dated August 7, 2018, reported by Paul J. Frederickson, CCR, CSR, CSR
19 No. 13164.

20 14. Attached hereto as **Exhibit 14** is a true and correct copy of excerpts of the deposition
21 transcript of Rene Gonzalez, dated August 8, 2018, reported by Paul J. Frederickson, CCR, CSR,
22 CSR No. 13164.

23 15. Attached hereto as **Exhibit 15** is a true and correct copy of excerpts of the deposition
24 transcript of Martin Logue, dated August 9, 2018, reported by Paul J. Frederickson, CCR, CSR, CSR
25 No. 13164.

26 16. Attached hereto as **Exhibit 16** is a true and correct copy of excerpts of the deposition
27 transcript of Scott Bergstresser, dated August 13, 2018, reported by Andrea M. Ignacio, CSR, RPR,
28 CRR, CCRR, CLR, CSR No. 9830.

1 17. Attached hereto as **Exhibit 17** is a true and correct copy of a Red Book log entry,
2 dated October 14, 2011, bearing Bates Number CCSF_CAVNESS 000309 and identified as Exhibit
3 69 to the deposition of Scott Bergstresser dated August 13, 2018.

4 18. Attached hereto as **Exhibit 18** is a true and correct copy of excerpts of the deposition
5 transcript of Evan Staehely, dated August 14, 2018, reported by Andrea M. Ignacio, CSR, RPR,
6 CRR, CCRR, CLR, CSR No. 9830.

7 19. Attached hereto as **Exhibit 19** is a true and correct copy of a policy and procedure for
8 Inmate Discipline, dated March 1, 2017, bearing Bates Numbers CCSF_CAVNESS 000284 through
9 CCSF_CAVNESS 000290, and identified as Exhibit 80 to the deposition of Evan Staehely dated
10 August 14, 2018.

11 20. Attached hereto as **Exhibit 20** is a true and correct copy of a hearing disposition, dated
12 October 15, 2011, bearing Bates Number CCSF_CAVNESS 000323, and identified as Exhibit 81 to
13 the deposition of Evan Staehely dated August 14, 2018.

14 21. Attached hereto as **Exhibit 21** is a true and correct copy of a hearing disposition, dated
15 October 15, 2011, bearing Bates Number PL_CAVNESS_0105, and identified as Exhibit 82 to the
16 deposition of Evan Staehely dated August 14, 2018.

17 22. Attached hereto as **Exhibit 22** is a true and correct copy of excerpts of the deposition
18 transcript of Scott Neu, dated August 16, 2018, reported by Mona M. Russo, CRR, RDR, CSR No.
19 8771.

20 23. Attached hereto as **Exhibit 23** is a true and correct copy of excerpts of the Rule
21 30(b)(6) deposition transcript of Lieutenant Charles D. Flewellen, dated October 3, 2018, reported by
22 Catherine A. Ryan, RMR, CRR, CSR No. 8239.

23 24. Attached hereto as **Exhibit 24** are true and correct copies of photographs taken of
24 Michael Cavness in October 2011 documenting his injuries as part of the investigation of the assault
25 he suffered at the hands of Raymond Saunders. These photographs bear the following Bates
26 Numbers: CCSF_CAVNESS 000263 (identified as Exhibit 15 to the deposition of Frank Winch
27 dated November 14, 2017); CCSF_CAVNESS 000266 (identified as Exhibit 117 to the deposition of
28 Lieutenant Charles D. Flewellen dated October 3, 2018); CCSF_CAVNESS 000265 (identified as

Exhibit 118 to the deposition of Lieutenant Charles D. Flewellen dated October 3, 2018);
CCSF_CAVNESS 000264; and CCSF_CAVNESS 000267.

25. Attached hereto as **Exhibit 25** is a true and correct copy of a schematic of County Jail
4, bearing Bates Number CCSF_CAVNESS 003190 and identified as Exhibit 106 to the deposition
of Lieutenant Charles D. Flewellen, dated October 3, 2018.

26. Attached hereto as **Exhibit 26** is a true and correct copy of a San Francisco Sherriff's
Department Chronological Report of Investigation, bearing Bates Numbers CCSF_CAVNESS
000050 through CCSF_CAVNESS 000054, and identified as Exhibit 111 to the deposition of
Lieutenant Charles D. Flewellen, dated October 3, 2018.

27. Exhibit 27 is intentionally omitted.

28. Exhibit 28 is intentionally omitted.

29. Attached hereto as **Exhibit 29** is a true and correct copy of a letter from the Office of
Citizens Complaints, dated April 23, 2012, bearing Bates number PL_CAVNESS_0107 and
identified as Exhibit 150 to the deposition of Lieutenant Charles D. Flewellen, dated October 3, 2018.

30. Attached hereto as **Exhibit 30** is a true and correct copy of excerpts of the Rule
30(b)(6) deposition transcript of Chief Deputy Paul Miyamoto, dated October 10, 2018, reported by
Paul J. Frederickson, CCR, CSR, CSR No. 13164.

31. Attached hereto as **Exhibit 31** is a true and correct copy of an email from Chief
Deputy Paul Miyamoto, dated April 27, 2011, bearing Bates number CCSF_CAVNESS_003361 and
identified as Exhibit 155 to the deposition of Chief Deputy Paul Miyamoto, dated October 10, 2018.

32. Attached hereto are true and correct copy of facility operation policies and procedures
for (i) Post 15, dated February 24, 2011, bearing Bates Numbers CCSF_CAVNESS_004681 through
CCSF_CAVNESS_004683, as **Exhibit 32**; (ii) Post 16, dated February 24, 2011, bearing Bates
Numbers CCSF_CAVNESS_004684 through CCSF_CAVNESS_004686, as **Exhibit 33**; and (iii)
Post 17, dated February 24, 2011, bearing Bates Numbers CCSF_CAVNESS_004687 through
CCSF_CAVNESS 004689, **Exhibit 34**, and identified as Exhibits 168, 169, and 170, respectively, to
the deposition of Chief Deputy Paul Miyamoto, dated October 10, 2018.

33. Attached hereto as **Exhibit 35** is a true and correct copy of the transcript of a recorded San Francisco Sheriff's Department Internal Affairs Unit interview bearing Bates Numbers CCSF_CAVNESS 003737 through CCSF_CAVNESS 003764 and identified as Exhibit 129 to the deposition of Lieutenant Charles D. Flewellen, dated October 3, 2018.

34. Attached hereto as **Exhibit 36** is a true and correct copy of the transcript of a recorded San Francisco Sheriff's Department Internal Affairs Unit interview bearing Bates Numbers CCSF_CAVNESS 003510 through CCSF_CAVNESS 003588 and identified as Exhibit 130 to the deposition of Lieutenant Charles D. Flewellen, dated October 3, 2018.

35. Attached hereto as **Exhibit 37** is a true and correct copy of the transcript of a recorded San Francisco Sheriff's Department Internal Affairs Unit interview bearing Bates Numbers CCSF_CAVNESS 003854 through CCSF_CAVNESS 003875 and identified as Exhibit 131 to the deposition of Lieutenant Charles D. Flewellen, dated October 3, 2018.

36. Attached hereto as **Exhibit 38** is a true and correct copy of the transcript of a recorded San Francisco Sheriff's Department Internal Affairs Unit interview bearing Bates Numbers CCSF_CAVNESS 003589 through CCSF_CAVNESS 003639 and identified as Exhibit 132 to the deposition of Lieutenant Charles D. Flewellen, dated October 3, 2018.

37. Attached hereto as **Exhibit 39** is a true and correct copy of the transcript of a recorded San Francisco Sheriff's Department Internal Affairs Unit interview bearing Bates Numbers CCSF_CAVNESS 000935 through CCSF_CAVNESS 000961.

38. Attached hereto as **Exhibit 40** is a true and correct copy of the transcript of a recorded San Francisco Sheriff's Department Internal Affairs Unit interview bearing Bates Numbers CCSF_CAVNESS 000512 through CCSF_CAVNESS 000552.

39. Attached hereto as **Exhibit 41** is a true and correct copy of summaries of recorded telephone conversations created as part of a San Francisco Sheriff's Department Internal Affairs Unit investigation, bearing Bates Number CCSF_CAVNESS 000444.

40. Attached hereto as **Exhibit 42** is a true and correct copy of an Administrative Segregation questionnaire dated February 12, 2013, bearing Bates numbers CCSF_CAVNESS 004621 through CCSF_CAVNESS 004622.

41. Attached hereto as **Exhibit 43** is a true and correct copy of pages from a sign in log for the law library at County Jail 4, bearing Bates numbers CCSF_CAVNESS 004757 through CCSF_CAVNESS 004759.

42. Attached hereto as **Exhibit 44** is a true and correct copy of a June 10, 2016 article in the San Francisco Examiner by Jonah Owen Lamb titled “Paper bag with incomplete internal affairs cases discovered in sheriff’s office,” available at <http://www.sfexaminer.com/paper-bag-incomplete-internal-affairs-cases-discovered-sheriffs-office/>.

43. On October 9, 2018, the Court ordered Defendants to “provide Plaintiff with the current discipline guidelines and inmate rules of conduct.” Dkt. No. 157. On November 1, 2018, Defendants produced additional documents Bates-stamped CCSF_CAVNESS 004763-CCSF_CAVNESS 004765. Attached hereto as **Exhibit 45** is a true and correct copy of the email from Defendants’ counsel’s paralegal Winnie Fong to Plaintiff’s counsel; and as **Exhibit 46** is a true and correct copy of the documents produced bearing Bates Numbers CCSF_CAVNESS 004763, CCSF_CAVNESS 004764, and CCSF_CAVNESS 004765, respectively.

44. Attached hereto as **Exhibit 47** is a true and correct copy of two documents: a memo from Lt. McConnell to Captain Ferrigno dated October 14, 2011, bearing Bates Numbers CCSF_CAVNESS 000117, and a cover email from Chief Ellen Brin dated October 14, 2011 bearing Bates Numbers CCSF_CAVNESS 000118 through CCSF_CAVNESS 000119. Both documents were merged and collectively identified as Exhibit 22 to the deposition of Frank Winch dated November 14, 2017.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on November 6, 2018, in San Francisco, California.

By: /s/ Stephen Henrick
Stephen Henrick

ECF ATTESTATION

I, Lee Crain, hereby attest that pursuant to Civil L.R. 5-1(i)(3), concurrence in the filing of this declaration has been obtained from Stephen Henrick.

November 6, 2018

/s/ Lee Crain

Lee Crain